REMARKS

This is a response to the final Office Action mailed on February 9, 2005.

Claims 1 and 3-20 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. patent 6,191,773 to Maruno et al. (Maruno). Applicant respectfully traverses the rejections.

Applicant notes that the rejections to claims 1 and 3-17 are repeated from the first Office Action.

The invention set forth in claim 1 differs from Maruno at least in that claim 1 sets forth that a processor is "configured to receive a selection gesture from the user for selecting a highlighted selection option." Thus, a selection option that is already highlighted can be selected based on the receiving of a selection gesture from the user.

In contrast, Maruno describes an interface apparatus where a menu item is highlighted in response to an identified hand shape. In particular, Maruno provides a display with menus 201, 202 and an icon 200 reflecting the shape of the viewer's hand. A CCD camera 3 picks up the hand shape. Fig. 1, col. 4, lines 32-40. A shape identifying means 22 judges if the shape is, for example, one finger, two fingers, or three fingers. Furthermore, an icon generating unit 24 may generate a numeral, e.g., "1" or "2" based on the hand shape, and the corresponding menu item is emphasized. Figs 7(a) and 7(b), col. 5, lines 13-42. Thus, a menu item is emphasized based on a recognized hand shape of a user.

Maruno provides no disclosure or suggestion of Applicant's invention, where selection options are highlighted, and a selection gesture is received from a user for selecting a highlighted selection option. Thus, with Applicant's invention, the selection option is already highlighted when it is selected. Maruno does the opposite – highlighting a menu item in response to an identified hand shape. Applicant's approach is advantageous because it provides a robust system

that overcomes the problems of the prior art, as discussed in the specification, e.g., pages 1-3. In particular, there is no confusion as to which selection option has been selected because the selection options are sequentially highlighted.

On page 6 of the Office Action, the Examiner further asserts that Maruno teaches that a selection gesture is received from the user for selecting a highlighted selection option when the selection gesture involves maintaining the same hand shape for a period of time. However, Maruno states that the display of an item on a menu is shown by emphasis as soon as the user holds up a certain number of fingers, for example. The emphasized menu item is then selected after the same hand shape is maintained for a specific time (col. 5, lines 39-46). In contrast, Applicant's claim 1 states that a processor receives a selection gesture for selecting a highlighted selection option. Thus, the selecting of an option is caused by the receiving of a selection gesture. This receiving of a selection gesture must be distinguished from the maintaining of a hand shape by Maruno. Withdrawal of the rejection to the independent claims 1, 10 and 14 is therefore respectfully requested.

Furthermore, the dependent claims are allowable at least because of their dependence from an allowable independent claim. However, the dependent claims themselves recite further patentable features. For example, regarding claims 18-20, claim 18, for example, sets forth that the processor highlights a next one of the selection options in response to determining that the selection gesture has not been received when a current one of the selection options is highlighted. In contrast, Maruno only teaches emphasizing a menu item when a user confronts an appliance and points out a specified number of fingers (col. 5, lines 32-42). There is simply no disclosure or suggestion of highlighting a next selection option in response to determining that a selection gesture has not been received.

Regarding the Examiner's statements on page 5 of the Office Action that claims 19 and 20 are rejected under the same rationale as claim 17, Applicant assumes that the Examiner meant to state that claims 19 and 20 are rejected under the same rationale as claim 18.

Withdrawal of the rejection to each of the dependent claims is therefore also respectfully requested.

Claim 2 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Maruno in view of U.S. patent 6,677,965 to Ullmann. Claim 2 sets forth that only one selection option is displayed at a time. In contrast, Maruno provides multiple menu items 201, 202 at a time (Fig. 1). Applicant's approach is advantageous because it avoids confusion as to which selection option the user is responding to with a gesture.

Moreover, Ullmann cannot cure the deficiencies of Maruno. Ullmann is concerned with a graphical user interface that uses a "rubber band" image to control the speed at which selections scroll or a control operation is repeated (Abstract). In particular, the user places a cursor or pointer over a GUI control, and selects and drags away from the control, causing a virtual rubber band to be displayed between the pointer and the GUI control. The Examiner asserts that it would be obvious to modify Maruno by incorporating a GUI device such as a list control 34 (Fig. 3b) as shown by Ullmann since this would save display space. However, there is no mention of such a need to save display space by Ullmann or Maruno. Moreover, the interface techniques of Ullmann and Maruno are inherently incompatible and could not be combined into an operative system since the list box of Ullmann is selected by a cursor rather than by the shape or movement of an operator's hand as taught by Maruno. "If when combined, the references 'would produce a seemingly inoperative device,' then they teach away from their combination." Tec Air Inc. v. Denso Manufacturing Michigan Inc., 192 F.3d 1353, 52 USPQ2d 1294 (CAFC

1999). One of ordinary skill in the art would intuitively see this, and would therefore be led away from the proposed modification.

Furthermore, there is no motivation to combine Maruno and Ullmann since they are concerned with different technical problems. In particular, Ullmann is not concerned with an interface apparatus such as that provided by Maruno, which is responsive to the shape or movement of an operator's hand (Abstract). Generally, one cannot base obviousness upon what a person skilled in the art could or might try but rather must consider what the prior art would have led a person skilled in the art to do. In re Antonie, 559 F.2d 618 195 USPQ 6 (CCPA, 1977). The Examiner must make a showing of a suggestion or motivation in the art to combine the references. In re Rouffet, 149 F.3d 1350, 47 USPQ2d 1453 (Fed. Cir. 1998). The Examiner has failed to make such a showing.

Withdrawal of the rejection to claim 2 is therefore respectfully requested.

In view of the above, each of the currently pending claims is believed to be in condition for allowance. The Examiner is respectfully requested to pass this application along to an early issue. The Examiner is invited to telephone the undersigned if there are any further issues to address.

Respectfully submitted,

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